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18 **UNITED STATES DISTRICT COURT**
19 **CENTRAL DISTRICT OF CALIFORNIA**

20 ANGEL AGUIAR, Individually and on
21 Behalf of All Others Similarly Situated,

22 Plaintiff,

23 vs.

24 MERISANT COMPANY, and WHOLE
25 EARTH SWEETENER COMPANY,
26 LLC,

27 Defendants.

SCOTT+SCOTT,
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Civil No.: 2:14-cv-00670-RGK-AGR

**DECLARATION OF AMANDA F.
LAWRENCE IN SUPPORT OF
PLAINTIFF'S MOTION FOR
FINAL APPROVAL OF CLASS
ACTION SETTLEMENT AND
REQUEST FOR ENTRY OF FINAL
JUDGMENT AND MOTION FOR
APPROVAL OF ATTORNEYS'
FEE AWARD, EXPENSE
REIMBURSEMENT, AND
INCENTIVE AWARD**

Judge: Hon. R. Gary Klausner
Date: February 2, 2015
Time: 9:00 a.m.
Ctvm: 850

28 DECLARATION OF AMANDA F. LAWRENCE

Civ. No.: 2:14-cv-00670-RKG(AGR_x)

1 Pursuant to 28 U.S.C. §1746, Amanda F. Lawrence, under penalty of
2 perjury, declares that the following is true and correct to the best of her knowledge
3 and belief:

4 1. I am a partner at the law firm of Scott+Scott, Attorneys At Law, LLP
5 (“Scott+Scott”), and counsel for Plaintiff Angel Aguiar (“Plaintiff” or “Aguiar”)
6 and the proposed Settlement Class.¹ I have personal knowledge of the matters set
7 forth herein based on my active participation in all material aspects of the
8 prosecution of the action, Case No. 2:14-CV-00670-RGK(AGRx) (the “Action”),
9 and could testify competently thereto if called upon to do so. I submit this
10 declaration in support of Plaintiff’s Motion for Final Approval of Class Action
11 Settlement and Request for Final Judgment (“Motion for Final Approval”) and
12 Motion for Approval of Attorneys’ Fee Award, Expense Reimbursement, and
13 Incentive Award.

14 **I. INTRODUCTION**

15 2. I represent Plaintiff Aguiar in this matter, and the Court has appointed
16 Scott+Scott as one of the Class Counsel for the proposed Settlement Class along
17 with the Wood Law Firm, LLC (“Wood Law”). I, and my firm, Scott+Scott, along
18 with Wood Law, have been responsible for the prosecution of this Action on behalf
19 of Plaintiff and have led the negotiations on behalf of her to achieve the
20 Settlement. From the outset of the investigation and filing of the Action, through
21 the negotiation and drafting of the Settlement now before the Court, Scott+Scott
22 and Wood Law have vigorously represented the interests of their client and the
23 Class members to obtain the best possible recovery. I believe Plaintiff’s
24 Counsel’s efforts have resulted in a Settlement for the Class that is fair, reasonable,
25 and adequate under Rule 23(e).

26
27 ¹ All capitalized terms not otherwise defined herein are defined in the Class
28 Settlement Agreement (the “Agreement” or “Settlement”). ECF No. 109-1.

1 **II. TERMS OF THE SETTLEMENT**

2 3. The Settlement created a \$1,650,000 cash fund (the “Settlement
3 Fund”) where Eligible Class Members will receive, at a minimum, \$5.00 in a cash
4 refund, and could receive up to \$30.00 in cash – a significant recovery considering
5 the damages model that would likely be employed if this matter proceeded to trial
6 and the fact that \$5.00 is more than the price of certain Pure Via Consumer
7 Products. The Settlement also requires Defendants to make substantive changes to
8 the Pure Via Consumer Product packaging and amendments to the PureVia.com
9 website (the “Injunctive Relief”) that resolve Plaintiff’s claims that the labeling
10 and marketing of the Pure Via Consumer Products were false and misleading.

11 4. Upon final approval of the Settlement, the claims against the
12 Defendants will be dismissed with prejudice, subject to the terms of the Agreement
13 and the Final Judgment that the Parties ask the Court to enter.

14 **III. PROCEDURAL HISTORY OF THE ACTION**

15 **A. The Complaint and the Motion to Dismiss**

16 5. Scott+Scott performed extensive work identifying and investigating
17 the potential factual and legal claims and drafting and filing the initial Complaint
18 on behalf of Plaintiff Aguiar and the Proposed Class. For example, Scott+Scott
19 reviewed and scrutinized the Pure Via Consumer Products’ labeling and
20 advertising and conducted independent scientific research regarding the
21 manufacturing process for the Pure Via Consumer Products and reviewed the
22 various patents for such processes.

23 6. The Action was filed on January 28, 2014 and the Complaint was
24 served on January 31, 2014. ECF Nos. 1, 7, 8. From that moment on, the Action
25 was litigated vigorously and expeditiously.
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1 7. Within a month, Defendants swiftly moved to dismiss the Complaint,
2 filing a Motion to Dismiss, attaching a lengthy memorandum and declaration with
3 a dozen exhibits. ECF No. 14.

4 8. Plaintiff opposed the Motion to Dismiss on March 3, 2014 (ECF No.
5 26), and, one week later, Defendants filed their reply in further support of the
6 Motion to Dismiss (ECF No. 34). In conjunction with the opposition to the Motion
7 to Dismiss, Plaintiff also submitted – and Defendants opposed – several notices of
8 supplemental authority. *See, e.g.*, ECF Nos. 52, 54.

9 9. The Court opted to take the Motion to Dismiss under submission, and
10 on March 24, 2014, it denied (in large part) Defendants’ Motion to Dismiss, but
11 dismissed Plaintiff’s unjust enrichment claims. ECF No. 56.

12 10. Therefore, Defendants answered the Complaint on May 22, 2014
13 (ECF No. 70), denying the majority of the allegations in the Complaint.

14 **B. Discovery Proceeds Rapidly**

15 11. The discovery process began soon after the Complaint was served.
16 Before the Court even issued its decision on the Motion to Dismiss, the Parties
17 each served comprehensive document requests and interrogatories on each other on
18 March 21, 2014.

19 12. Soon thereafter, the Parties conferred and submitted their Joint Rule
20 26(f) Report (ECF No. 49) and Proposed Protective Order (ECF No. 50) to the
21 Court on March 27, 2014.

22 13. On May 5, 2014, the Court held an in-person scheduling conference
23 and an aggressive class certification schedule was set, thus mandating even more
24 comprehensive and rapid discovery.

25 14. To that end, both Plaintiff and Defendants produced their documents
26 in April and May of 2014. Plaintiff’s Counsel reviewed over 25,000 pages of
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1 documents, including numerous lengthy product studies and voluminous Excel
2 spreadsheets.

3 15. Plaintiff issued a Notice of Rule 30(b)(6) Deposition on Defendants
4 and, on May 14, 2014, took the all-day deposition of Cheryl Gill, director, North
5 American Marketing, Merisant US, Inc. in Chicago, Illinois.

6 16. Defendants likewise sought depositions and, on May 27, 2014, took
7 the all-day deposition of Plaintiff Aguiar in Los Angeles, California.

8 17. Plaintiff's Counsel also issued five subpoenas to third-party marketers
9 and retailers of Pure Via Consumer Products.

10 **C. Comprehensive Class Certification Briefing Ensues**

11 18. Pursuant to the Court's aggressive schedule, Plaintiff filed her Motion
12 for Class Certification on May 29, 2014 (ECF No. 71). That filing included my
13 declaration attaching fifteen exhibits, including two expert reports (ECF No. 72).

14 19. One expert submitted a detailed report concerning the appropriate
15 class-wide calculation of damages in consumer cases and in this case in particular.

16 20. The other expert, a professor at the Wharton School at the University
17 of Pennsylvania, submitted a report pertaining to consumer perceptions and
18 understanding of the term "natural" in the food context.

19 21. Within two weeks of filing these expert reports, Defendants deposed
20 both of Plaintiff's class certification experts. Plaintiff's damages expert, Christian
21 Tregillis, CPA, ABV, CLP, was deposed for a full day on June 5, 2014 in Los
22 Angeles, California, while Plaintiff's marketing expert, Professor Gal Zauberman,
23 was deposed on June 13, 2014 in Philadelphia, Pennsylvania.

24 22. On June 30, 2014, Defendants not only opposed Plaintiff's Motion for
25 Class Certification (ECF No. 86), but also separately moved for an Order Denying
26 Class Certification (ECF No. 85), which itself attached twenty-four exhibits to a
27 supporting declaration (ECF No. 87).

1 23. In conjunction with their Opposition to Plaintiff's Motion for Class
2 Certification, Defendants likewise submitted two expert reports: one concerning
3 damages and one attempting to refute the arguments made concerning consumer
4 perception of the term "natural."

5 24. Plaintiff's Counsel noticed the depositions of both of these experts for
6 the week of July 7, 2014 and were prepared to take their depositions in
7 Washington, D.C.

8 25. On July 7, 2014, Plaintiff filed her opposition to Defendants' Motion
9 to Deny Class Certification.

10 26. A hearing on both motions pertaining to Class Certification was
11 scheduled before the Court on July 28, 2014.

12 27. As discussed below, the Parties were able to reach resolution of the
13 Action and thus both motions were withdrawn on July 14, 2014 (ECF Nos. 104
14 and 105).

15 **D. Settlement Negotiations**

16 28. While the Action was rapidly and contentiously progressing through
17 discovery and class certification, the Parties also began to discuss potential
18 resolution of the Action.

19 29. On April 29, 2014, I first spoke with counsel for Defendants
20 telephonically regarding settlement. That conversation continued on a number of
21 phone calls spanning over two months. During that time period, numerous
22 settlement proposals were offered, rejected, and modified.

23 30. The settlement-related negotiations were hard-fought, and it appeared
24 at many junctures that the Parties would not reach agreement. During the
25 negotiations, multiple proposals were exchanged, rejected, and modified prior to
26 being accepted. Accordingly, the Proposed Settlement is the product of extensive,
27 arms-length, and vigorously contested settlement negotiations.

1 31. Ultimately, on July 8, 2014, after a series of counter proposals and
2 phone calls, on the eve of the depositions of Defendants' class certification experts,
3 we were able to reach a resolution in principle.

4 32. On July 10, 2014, the Parties entered into a "Memorandum of
5 Understanding," setting forth the parameters of the agreed-upon Settlement and
6 phoned the Court to inform it of this development. As mentioned above, all Parties
7 then withdrew their class certification related motions.

8 33. Over the ensuing weeks, the Parties worked together to draft the Class
9 Action Settlement Agreement and to select the Claims Administrator.

10 34. I caused the Class Action Settlement Agreement as well as the
11 documents in support of preliminary approval of the Settlement to be filed with the
12 Court on August 18, 2014.

13 35. In my opinion, this Settlement demonstrates that the best practicable
14 result was achieved on behalf of the Class.

15 36. On October 2, 2014, this Court granted preliminary approval of the
16 Settlement, found that the proposed Settlement Class met the requirements under
17 Rule 23 Sections (a) and (b), and granted Plaintiff's Motion for Certification of the
18 Settlement Class. ECF No. 113. The Court also found the proposed Notice to be
19 a sufficiently balanced, accurate, and informative way to satisfy due process
20 concerns and therefore approved the Notice Plan. *Id.*

21 37. After phone calls with the Court, on October 16, 2014, the Parties
22 filed a joint stipulation suggesting dates regarding final approval of the Settlement
23 (ECF No. 114). The Court granted the dates filed in that stipulation on October 17,
24 2014 (ECF No. 115), including that the Fairness Hearing will be held on February
25 2, 2015 and the deadline for the filing of objections is January 2, 2015.

26 38. Since the preliminary approval of the Settlement, Scott+Scott and
27 Wood Law have worked to ensure the full and proper administration of the
28

1 Settlement.

2 39. Plaintiff's Counsel seeks final approval of the Settlement after months
3 of zealous negotiations by the Parties on behalf of their respective clients.

4 **IV. THE NOTICE PROCESS**

5 40. The terms of the Settlement are fully set forth in the Agreement and in
6 the Notice. Pursuant to the Court's Order, starting on November 7, 2014, copies of
7 the Notice were mailed to potential Class Members. As of November 7, 2014, an
8 aggregate of 1,899 Notice Packets had been mailed to potential Class Members.
9 *See* Declaration of Jeffrey D. Dahl with Respect to Implementation of the Notice
10 Plan and Performance of Required Settlement Administration Activities (the "Dahl
11 Decl.") (attached hereto as Exhibit A), ¶11.

12 41. Additionally, on October 13, 2014, the Claims Administrator issued a
13 general press release and a full press release on October 27, 2014. Dahl Decl., ¶22.
14 Notice was also published in *People Magazine* on November 7, 2014 and in *USA*
15 *Today* on October 30, 2014 – to a combined readership of 45 million. Dahl Decl.,
16 ¶13. Furthermore, the Claims Administrator caused over 25.3 million web ad
17 impressions to be made and created a website dedicated to the Settlement
18 (<https://www.PureViaSweetenerSettlement.com/>) which, as of December 14, 2014,
19 has drawn 34,677 visits. Dahl Decl., ¶¶23, 25-27.

20 42. The Notice mailed, published, and posted advised all recipients that
21 Class members who did not wish to participate in the Settlement could exclude
22 themselves from the Class. The Notice also advised all recipients that Class
23 members could object to any aspect of the Settlement, including the request for an
24 award of attorneys' fees and reimbursement of expenses. The Notice provided
25 straightforward instructions for Class Members to file their requests for exclusion
26 and objections.

1 43. The Notice stated that the deadline for filing and serving objections to
2 any aspect of the Settlement is January 2, 2015. The Notice also set forth the
3 requirements for, and instructions on, submitting a valid request for exclusion or a
4 valid objection. As of December 14, 2014, Dahl averred that it had received only
5 two requests for exclusion from the Class. *See* Dahl Decl., ¶32.

6 44. This Court scheduled the filing of Plaintiff's Memorandum in Support
7 of Final Approval of Class Action Settlement and the Application for Award of
8 Attorneys' Fees and Expenses before the final objection date for Class members,
9 so that Class members could review and respond to the two Motions and all papers
10 filed with them. As of December 14, 2014, though, no objections to the
11 Settlement or the proposed fee request have been filed. Dahl Decl., ¶33. Should
12 any objections be filed, Plaintiff's Counsel will respond to them within the
13 schedule set by the Court.

14 **V. PLAINTIFF'S COUNSEL BELIEVES THE SETTLEMENT MERITS**
15 **APPROVAL**

16 45. Plaintiff's Counsel firmly believes that the Settlement is fair,
17 reasonable, and adequate under applicable Ninth Circuit law. This assessment is
18 based on Plaintiff's Counsel's extensive investigation, analysis of the marketing
19 materials at issue, extensive research into the applicable law in conjunction with
20 both the Motion to Dismiss and the Motion for Class Certification, consultation
21 with experts, analysis of thousands of pages of documents, discussions with
22 counsel for Defendants, an analysis of the amount obtained in settlement versus the
23 possibility of obtaining a larger judgment at trial, the funds available to settle, an
24 evaluation of the certainty of a recovery versus the risks of no recovery at all,
25 Plaintiff's Counsel's past experience in other class actions, the serious disputes
26 between the Parties concerning damages and liability, and the favorable reaction of
27 the Class.

1 46. Plaintiff remains convinced her case has merit, but recognizes
2 substantial risk is involved in continued litigation. Based on extensive
3 investigation and discovery, Plaintiff believes that she could obtain class
4 certification, defeat all dispositive motions filed by Defendants, and proceed to a
5 trial on the merits where she could meet her burden of demonstrating that
6 reasonable consumers are misled by Defendants' advertising of Pure Via as
7 "natural".

8 47. Plaintiff and Plaintiff's Counsel recognize, however, the expense and
9 length of continued proceedings necessary to prosecute the claims through trial and
10 appeal, and have taken into account the uncertain outcome and risk of litigation, as
11 well as the difficulties and delays inherent in such litigation. In particular in this
12 case, one of the hotly contested issues in this action would be consumer perception
13 of "natural" to determine the materiality and deceptiveness of Defendants' labels.
14 Furthermore, liability in this Action will turn on whether Defendants' labeling
15 message is likely to deceive the reasonable consumer. Such issues would likely be
16 the subject of competing expert testimony, and indeed, already were at the class
17 certification level. Continued litigation of the Action thus would require extensive
18 resources and Court time. I believe the monetary, advertising, marketing, and
19 labeling terms set forth in the Proposed Settlement confer substantial benefits upon
20 the Settlement Class members. Based on the above-described evaluation, I have
21 determined that the Proposed Settlement is fair, reasonable, and adequate and in
22 the best interest of the Settlement Class.

23 48. Defendants have denied, and continue to deny, any liability and
24 maintain that their current labeling is truthful and not misleading and that it does
25 not imply that Pure Via products consist primarily of unprocessed stevia.
26 Defendants continue to maintain that each of its ingredients exists in nature or have
27 been extracted from plant material through biological processes. Defendants have
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1 already vigorously opposed certification of a litigation class and argued, among
2 other things, that individualized issues related to damages predominate because the
3 proposed class members purchased the Pure Via Consumer Products for varying
4 reasons, had varying interpretations of the statements on the Product labels, and
5 purchased the Pure Via Consumer Products at various prices set by independent
6 retailers. Therefore, Defendants have vigorously disputed that damages can be
7 proven on a nation-wide Class basis. Indeed, Defendants have denied, and
8 continue to deny, any and all fault, wrongdoing, and liability for Plaintiff's claims.
9 If any of Defendants' factual and legal defenses were successful, they could
10 substantially impair the value of Plaintiff's claims.

11 **VI. PLAINTIFF'S COUNSEL BELIEVES THE CLASS SHOULD BE**
12 **CERTIFIED**

13 49. The certification of the Settlement Class for settlement purposes
14 should be confirmed in a final approval order.

15 50. The proposed Settlement Class satisfies all of the Rule 23 certification
16 requirements.

17 51. According to Defendant's records, significantly more than 40
18 consumers purchased Pure Via products during the Class Period.

19 52. Indeed, it is estimated that the Settlement Class members number over
20 1.2 million. Dahl Decl., ¶34. This number easily exceeds the threshold for
21 establishing numerosity.

22 53. Plaintiff is a member of the Class she seeks to represent and her
23 claims arise from the same alleged misconduct of Defendants.

24 54. Plaintiff has sought and obtained remedies equally applicable and
25 beneficial to the Settlement Class as to herself and has no conflicts of interests with
26 other Settlement Class members. She has diligently advanced the Action.

1 55. Here, the determination of the following common questions will
2 resolve issues central to the validity of Plaintiff's and Settlement Class members'
3 claims: (i) whether Defendants' marketing, advertising, labeling, and selling of
4 Pure Via constitute (a) an unfair, unlawful, or fraudulent practice and (b) false
5 advertising; (ii) whether Defendants materially misrepresented to the Class
6 members that Pure Via is "natural"; (iii) whether Defendants' alleged
7 misrepresentations and omissions were material to reasonable consumers; and (iv)
8 whether Defendants' alleged conduct injured consumers and, if so, the extent of
9 the injury.

10 **VII. PLAINTIFF'S COUNSEL BELIEVES THE REQUESTED FEES AND**
11 **EXPENSES MERIT APPROVAL**

12 56. Plaintiff's Counsel respectfully requests an award of 30% of the
13 Settlement Fund as of \$1,650,000.00, which is \$495,000.00, including \$118,854
14 for reimbursement of expenses incurred in litigating the Action. When the
15 expenses are subtracted out, the fee award is actually \$376,146 and represents 23%
16 of the Settlement Fund. Plaintiff's Counsel respectfully submits that this request is
17 consistent with established precedent in this District Court and throughout the
18 Ninth Circuit, as well as in federal courts throughout the country; fees in this range
19 and, indeed, above this range have been consistently awarded in consumer class
20 actions to class counsel working on a contingent fee basis and obtaining a common
21 fund for the benefit of a class.

22 57. Scott+Scott as well as Wood Law are both nationally recognized law
23 firms that specialize in representing classes of individuals in consumer class
24 actions in general, with specific experience with consumer fraud and false
25 advertising. They have qualified as class counsel in other class actions and have a
26 proven track record of successful prosecution of significant class actions. The
27 respective firm resumes are attached hereto as Exhibits B and C. They faced
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1 Defense counsel that were likewise sophisticated and experienced consumer class
2 action litigators.

3 58. As of December 18, 2014, Scott+Scott has devoted more than 2,196
4 hours of attorney time (1,857.2 hours), law clerk time (25.2 hours) and paralegal
5 time (313.6 hours) to this Action. *See* Declaration of Daryl F. Scott in Support of
6 Plaintiff's Motion for Approval of Attorneys' Fee Award, Expense
7 Reimbursement, and Incentive Award ("Scott Decl.") (attached hereto as Exhibit
8 D), ¶4. As a result, the lodestar for Scott+Scott is currently \$1,065,602.00. *Id.* In
9 addition, Wood Law devoted over 79 hours to this Action with a resulting lodestar
10 of \$24,993.50. *See* Declaration of E. Kirk Wood in Support of Plaintiff's Motion
11 for Approval of Attorneys' Fee Award, Expense Reimbursement, and Incentive
12 Award ("Wood Decl.") (attached hereto as Exhibit E), ¶4. Therefore the combined
13 lodestar for Plaintiff's Counsel totals \$1,090,595.50.

14 59. In reviewing my firm's time entries, I removed entries for attorneys
15 that worked less than ten hours on the case.

16 60. Moreover, Plaintiff's Counsel also anticipates many additional hours
17 will be spent in seeing the Settlement through to completion, including final
18 approval. As detailed above, Plaintiff's Counsel's work included:

19 a) an investigation of Plaintiff's claims and allegations, including a
20 review of the publicly available marketing materials applicable to the allegations of
21 the case and review of the patents for the processes involved in extracting and
22 creating ingredients;

23 b) drafting the Complaint and extensive briefing including, but not
24 limited to, briefing the oppositions to Defendants' Motion to Dismiss and Motion
25 to Deny Class Certification;

1 c) throughout the Action, continual research of the law regarding the
2 claims and defenses asserted, including, but not limited to, FDA standards on
3 “natural” and the developing law surrounding ascertainability;

4 d) propounding and negotiating discovery demands served on
5 Defendants, and negotiating with respect to discovery served on Plaintiff;

6 e) review, analysis, and organization of tens of thousands of pages of
7 documents produced by Defendants, including detailed Excel spreadsheets, and
8 selecting the most relevant documents to attach to Plaintiff’s Motion for Class
9 Certification;

10 f) participating in extensive discussions with defense counsel, in person
11 and by phone, to explore each side’s presentation of the case;

12 g) interviewing, obtaining, and working with experts in support of
13 Plaintiff’s Motion for Class Certification;

14 h) extensively briefing class certification;

15 i) preparing for and taking a Rule 30(b)(6) deposition of Defendants;

16 j) preparing for, and defending, two expert depositions as well as
17 Plaintiff’s deposition;

18 k) extensively reviewing and preparing to take the depositions of
19 Defendants’ two expert witnesses at the class certification stage;

20 l) drafting and negotiation of the Agreement and its exhibits;

21 m) working with Defendants’ counsel to prepare the preliminary approval
22 papers; and

23 n) working with Dahl Administration, LLC on the administration of the
24 Settlement and Notice program.

25 61. The scope and depth of this work, all performed efficiently and with a
26 substantial result, supports approval of the fee application as supported by the Scott
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1 Decl. and the Wood Decl., Exhibits D and E, respectively attached to this
2 Declaration.

3 62. The requested multiplier of 0.45 also strongly supports payment of the
4 fee award. Plaintiff's Counsel's request for 23% of the Settlement Fund would
5 result in the application of a fractional multiplier of only 0.45 (*i.e.*, roughly 45% of
6 Plaintiff's Counsel's actual lodestar). Therefore, Plaintiff's Counsel submits that
7 the time and labor expended by counsel and the attendant lodestar/multiplier cross-
8 check fully support the requested attorneys' fees as fair and reasonable.

9 **A. A Reasonable Percentage of the Fund Recovered Is the**
10 **Appropriate Method to Use in Awarding Attorneys' Fees**

11 63. For Plaintiff's Counsel's extensive efforts on behalf of the Class, they
12 are applying for compensation from the Settlement Fund on a percentage basis.
13 The percentage method is the appropriate method of fee recovery because, among
14 other things, it aligns the lawyers' interest in being paid a fair fee with the interest
15 of the Class in achieving the maximum recovery in the shortest amount of time
16 required under the circumstances, is supported by public policy, has been
17 recognized as appropriate by the Supreme Court for cases of this nature, and
18 represents the overwhelming current trend in most circuits, including the Ninth
19 Circuit.

20 64. As set forth in Plaintiff's Counsel's Memorandum in Support of
21 Motion for Approval of Attorneys' Fee Award, Expense Reimbursement, and
22 Incentive Award ("Fee Memorandum"), the requested fee is a fair and reasonable
23 attorneys' fee percentage request in common fund cases such as this and is within
24 the range of the percentages typically awarded in consumer class actions in this
25 Circuit.

26 65. In addition, Plaintiff's Counsel's aggregate "lodestar," the number of
27 hours worked multiplied by the applicable hourly rate, in this case is \$1,090,595.

1 The 23% fee request is, therefore, far less than Plaintiff's Counsel's actual lodestar
2 fees – and there is no multiplier.

3 66. As more fully set forth in the Fee Memorandum, Plaintiff's Counsel
4 believe that the fee request is very reasonable given the recovery obtained for the
5 benefit of the Class, Plaintiff's Counsel's lodestar, the risks of litigation, the
6 contingent nature of Counsel's representation, the complexity of the legal and
7 factual questions at issue, and the extensive efforts of Counsel for Plaintiff.

8 **B. Consideration of Relevant Factors Justifies an Award of a**
9 **23% Fee in This Case**

10 **1. The Excellent Settlement Achieved**

11 67. The \$1,650,000 million cash settlement here provides an immediate
12 and certain benefit to the Settlement Class. This favorable settlement was achieved
13 as a result of the extensive prosecutorial and investigative efforts of Plaintiff's
14 Counsel, contentious motion practice and arm's-length settlement negotiations, as
15 detailed herein. As a result of this Settlement, millions of Class members will
16 benefit and receive compensation for their losses and avoid the very real risk of no
17 recovery in the absence of a settlement.

18 **2. Objections by Class Members to the Settlement or**
19 **Requested Fee**

20 68. The Notice explains that Lead Counsel will seek an award of
21 attorneys' fees of up to 30% of the Settlement Fund including expenses. Pursuant
22 to this Court's Order, all objections must be served and filed no later than January
23 2, 2015. Not a single objection has been received to date, although the deadline to
24 object has not yet passed. Indeed, the reaction of the Class to the Settlement has
25 been entirely positive. This factor is relevant to a determination of the
26 reasonableness of the fee request.

1 **3. The Diligent Prosecution of this Case**

2 69. The requested fee is also warranted in light of the extensive efforts on
3 the part of Plaintiff's Counsel, as outlined above, that were required to produce this
4 Settlement. Counsel for Plaintiff and their in-house professionals spent over 2,200
5 hours of time on the case, *inter alia*, conducting formal and informal discovery,
6 reviewing and analyzing thousands of pages of documents, taking depositions,
7 defending depositions (including expert depositions), mastering the relevant facts
8 and dynamics of Defendants' business and products, drafting comprehensive
9 memoranda of law concerning difficult and novel issues in connection with the
10 motion to dismiss and class certification, formulating strategy, working with
11 experts in order to make effective arguments, and otherwise preparing this case for
12 trial.

13 **4. The Complexity of the Action's Factual and Legal**
14 **Questions**

15 70. Courts have recognized that the novelty and difficulty of the issues in
16 a case are significant factors to be considered in making a fee award. As
17 demonstrated by the discussion above of the contested issues in the Action, had the
18 Settlement not been reached, the complex factual and legal questions at issue
19 would continue to be the subject of substantial analysis and dispute. Numerous
20 complex issues would be involved in proving liability, including whether
21 Defendants' advertising was untrue, whether Class members relied on
22 advertisements, whether those advertisements and statements were uniform and
23 universal, and whether Plaintiff and Class members suffered damages, and if they
24 did, the amount thereof. Plaintiff was also faced with demonstrating that Class
25 members were ascertainable and that a multi-state class of non-California
26 consumers was certifiable.

1 71. This case was novel and difficult in light of the scientific background
2 required to understand the complex chemical composition and processing of the
3 Pure Via ingredients. The primary issue in this case concerned the marketing of a
4 sugar alternative containing allegedly artificial and synthetic ingredients with
5 various suggestive, but not necessarily explicit, claims that the product was all
6 natural and made predominantly from the stevia plant. There is no established
7 statutory or regulatory definition of what constitutes a natural product. Moreover,
8 the statements challenged appeared in a variety of media, including on the Pure
9 Via Consumer Products' labels and website, all of which included different
10 variations and combinations of phrases, so that Plaintiff was tasked with the
11 particularly difficult challenge of demonstrating a common message or theme.

12 **5. The Risks of Litigation and the Contingent Nature of**
13 **the Representation**

14 72. A determination of a fair fee must include consideration of the
15 contingent nature of the fee, the financial burden carried by counsel, and the
16 difficulties that were overcome in obtaining the Settlement.

17 73. This Action was undertaken by Plaintiff's Counsel on a wholly
18 contingent basis. From the outset, Plaintiff's Counsel understood that they were
19 embarking on a complex, expensive, and lengthy litigation with no guarantee of
20 ever being compensated for the investment of time and money the case would
21 require. In undertaking that responsibility, Plaintiff's Counsel were obligated to
22 assure that sufficient attorney resources were dedicated to the prosecution of the
23 Action and that funds were available to compensate staff and to pay for the
24 considerable out-of-pocket expenses that a case such as this entails.

25 74. Because of the nature of a contingent practice where cases are
26 predominantly "big cases" lasting several years, not only do contingent litigation
27 firms have to pay regular overhead, but they also have to advance the expenses of
28

1 the litigation. With it often taking years for these cases to conclude, the financial
2 burden on contingent counsel is far greater than on a firm that is paid on an
3 ongoing basis.

4 75. As noted above, counsel for Plaintiff committed over 2,200 hours of
5 attorney and in-house professional time in the prosecution of the Action and fully
6 assumed the risk of an unsuccessful result. Counsel should be fairly compensated
7 for their efforts and assumption of risk. Plaintiff's Counsel have received no
8 compensation for their services during the course of the Action and have incurred
9 significant expenses in litigating for the benefit of the Class. Any fee or expense
10 award to counsel has always been at risk, completely contingent on the result
11 achieved and on this Court's exercise of its discretion in making any award.
12 Moreover, counsel for Plaintiff have incurred \$118,854 in expenses alone – a
13 substantial amount with a very real risk of not recovering any of it – in order to
14 vigorously litigate this case to a successful conclusion.

15 76. As discussed above, this case had significant risks concerning
16 liability, causation, and damages. Plaintiff's success was by no means assured, as
17 both sides claimed the evidence supported their assertions. Success hinged on
18 Plaintiff's ability to win challenging arguments on every element of the causes of
19 action. Was the Settlement not achieved, Plaintiff faced years of costly and risky
20 litigation against Defendants, with ultimate success far from certain.

21 77. There was no guarantee that Plaintiff would succeed in convincing the
22 Court or a jury that the statements made by Defendants during the Class Period
23 regarding the Pure Via Consumer Products were false or misleading, that Class
24 members relied on them in making their purchases, or that there were recoverable
25 damages. Indeed, Defendants demonstrated the vigor with which they would
26 litigate the Action by actively contesting class certification. There was no
27 guarantee that the Court would grant class certification.

1 78. There are numerous cases where Plaintiffs' counsel in contingent
2 cases such as this, after the expenditure of thousands of hours, have received no
3 compensation.

4 **C. Counsel for Plaintiff Should Be Reimbursed for the**
5 **Expenses Incurred**

6 79. The payment of expenses to counsel who create a common fund is
7 appropriate. Plaintiff's Counsel have incurred expenses in the amount of
8 \$118,854. A breakdown of the aggregate expenses incurred by category is
9 contained in the Scott Decl., ¶5 and the Wood Decl., ¶5.

10 80. The Notice states that Plaintiff's Counsel intend to apply for expenses
11 included within the fee request. As with Plaintiff's Counsel's fee request, not a
12 single objection has been raised to this request, although the deadline to object has
13 not yet passed.

14 81. I have reviewed the expenses for which reimbursement is sought, and
15 in view of the complex nature of the Action, and I believe that the expenses
16 incurred by Plaintiff's Counsel were reasonable in amount and necessarily incurred
17 for the successful prosecution of the Action.

18 **D. Plaintiff Should Be Awarded an Incentive Award**

19 82. Plaintiff performed an important and valuable service for the benefit
20 of the Settlement Class. She met, conferred, and corresponded with Plaintiff's
21 Counsel as needed for the efficient process of this litigation. Declaration of Angel
22 Aguiar ("Aguiar Decl.") attached hereto as Exhibit F, at ¶8.

23 83. Plaintiff participated in numerous interviews by Plaintiff's Counsel
24 and provided discovery, including personal information relating to her purchases of
25 the Pure Via Consumer Products. Aguiar Decl., ¶8.

84. Plaintiff likewise prepared for and sat for a grueling all day deposition, during which time she was asked numerous technical and, at times, personal questions. Aguiar Decl., ¶8.

85. Apart from an incentive award (if granted), Plaintiff will not receive any benefits beyond those she would receive as an ordinary Class member.

86. The diligent efforts of Plaintiff and Plaintiff's Counsel to prosecute this case, as described herein, demonstrate that Plaintiff and Plaintiff's Counsel have more than adequately represented and acted for the benefit of the Class as a whole.

87. For the reasons set forth in this Declaration as well as in the Memorandum in Support of Plaintiffs' Motion for Approval of an Attorneys' Fee Award, Expense Reimbursement, and Incentive Awards, Plaintiff's Counsel respectfully request that the Court approve their request for an award of 30% of the Settlement Fund, or \$495,000, in attorneys' fees and expenses.

88. Attached hereto are true and correct copies of the following documents:

Exhibit A – Dahl Declaration

Exhibit B – Scott+Scott Firm Resume

Exhibit C – Wood Law Firm Resume

Exhibit D – Scott Declaration

Exhibit E – Wood Declaration

Exhibit F – Declaration of Angel Aguiar

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed on this 18th day of December, 2014, in Colchester, CT.

/s/ Amanda F. Lawrence

Amanda F. Lawrence